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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CASSANDRA JEAN RHODES, Defendant and Appellant.	A140163 (Del Norte County Super. Ct. No. CRF139445)

Defendant Cassandra Jean Rhodes tried to cash a stolen check at a casino, and was charged with burglary (Pen. Code, § 459),[1] and possession of a completed check with intent to defraud (§ 475a). In exchange for her guilty plea to the check possession offense, the burglary charge and misdemeanor charges in trailing cases were dismissed and Rhodes was placed on probation with no time in custody. She contests the alcohol-related conditions of her probation, and the $100 she was required to pay for attorney fees.[2] We affirm.

PROBATION CONDITIONS

Rhodes's grant of probation included the following alcohol-related conditions: "10. Submit to a blood, breath, urine, and or field sobriety test[] on demand of any Probation or Peace Officer. Submit to chemical testing for drugs or alcohol on demand, not to exceed $20.00 per test at your own expense. Submit clean test results. For any

[1] Subsequent statutory references are to the Penal Code.

[2] In her reply brief, Rhodes abandoned contentions in her opening brief involving her motion to withdraw her plea.

pre-scheduled tests, the results must also be undiluted." "12. ASSESSMENT: Report to the Alcohol and Other Drugs Program [A.O.D.], located at 540 H Street, Crescent City, (707) 464-4813, within 2 business days of sentencing or release from custody. Defendant shall undergo an alcohol/drug assessment and shall comply with all recommendations contained in said assessment and as directed by the Probation Officer or as approved by the court. Defendant shall enter and successfully complete all phases of the recommended treatment program. Said assessment and program will be at your own expense." "14. Totally refrain from the possession or consumption of alcohol, and stay out of places where alcohol is the chief item of sale."

Trial courts have broad discretion to impose conditions of probation that foster rehabilitation and protect public safety. (*People v. Welch* (1993) 5 Cal.4th 228, 233.) "Generally, '[a] condition of probation will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . ." [Citation.] ' " (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) The first two prongs supporting a holding the alcohol conditions are invalid are satisfied here. Rhodes contends that the third is satisfied as well because no facts in the record indicate that her offenses had any connection to her consumption of alcohol. She asks us to modify testing condition 10 "to specify it relates only to drugs," direct that A.O.D. condition 12 be modified "to eliminate requirements related to alcohol, if possible," and vacate prohibition condition 14. She objected in the trial court to these conditions.

Rhodes does not challenge the drug-related conditions of her probation. She admitted some drug use to the probation officer, picked up drug charges while released on her own recognizance before sentencing in this case, and testified that she had "already done A.O.D." The probation report stated that "[b]ased upon numerous other law enforcement contacts aside from the instant offense, the Probation Department has reason to believe that the defendant has an ongoing substance abuse problem . . . ." In the sentencing hearing the probation officer stated that Rhodes admitted having "substance

abuse issues," and the court found that she could benefit from treatment for her "problem with substance abuse."

Rhodes' objection to the alcohol conditions relies primarily on *People v. Kiddoo* (1990) 225 Cal.App.3d 922, 927–928 (*Kiddoo*), disapproved on another ground in *People v. Welch, supra,* 5 Cal.4th 228 at page 237. The defendant in *Kiddoo* was convicted of a drug offense, had used illegal drugs and alcohol since age 14, and admitted being "a social drinker" and using methamphetamine "sporadically." (*Id.* at p. 927.) The court concluded without analysis that there was "no factual indication in the record that the [alcohol-related probation conditions], in defendant's case, [are] reasonably related to future criminal behavior." (*Id.* at p. 928.)

The *Kiddoo* decision is an outlier and we will not follow it. Other reported cases involving drugs recognize the link between drug use and alcohol. Those other cases include this court's decision in *People v. Lindsay* (1992) 10 Cal.App.4th 1642 (*Lindsay*), where the defendant was convicted of selling cocaine and admitted that the crime was committed to support his cocaine habit. We upheld a probation condition prohibiting the use of alcohol, finding "a nexus between alcohol consumption and drug use. As an addict, refraining from the use of drugs will take a great deal of willpower on appellant's part. A person's exercise of judgment may be impaired by the consumption of alcohol, and in appellant's case, this could lead to his giving in to the use of drugs." (*Id.* at p. 1645.) We noted that a nexus between drug use and alcohol had been recognized in *People v. Smith* (1983) 145 Cal.App.3d 1032, 1034–1035 (*Smith*), which upheld an alcohol prohibition where the defendant had a history of drug use and was convicted of a drug-related offense.

Kiddoo was persuasively criticized in *People v. Beal* (1997) 60 Cal.App.4th 84 (*Beal*). The defendant in *Beal*, like the one in *Kiddoo*, was convicted of a drug offense, admitted a history of illegal drug use, and "characterized herself as a social drinker." (*Beal, supra,* 60 Cal.App.4th at pp. 85, 86, fn. 1.) The court upheld an alcohol prohibition, reasoning based on "common sense" and "empirical evidence . . . that there is a nexus between drug use and alcohol consumption. It is well documented that the use

of alcohol lessens self-control and thus may create a situation where the user has reduced ability to stay away from drugs. [Citations.] Presumably for this very reason, the vast majority of drug treatment programs, including the one [defendant] participates in as a condition of her probation, require abstinence from alcohol use. [Citation]." (*Id*. at pp. 86, 87; see also *People v. Balestra* (1999) 76 Cal.App.4th 57, 68–69 [criticizing *Kiddoo* for failing to give "correct deference to the trial court's determination of appropriate conditions of probation"].)

Although Rhodes was not convicted of a drug-related offense, she admitted, and the court found, that she has a "substance abuse" problem. The court could reasonably decide, consistent with *Beal*, *Lindsay*, and *Smith*, that she had to maintain complete sobriety to have an opportunity at rehabilitation. "Under the circumstances, it was not an abuse of discretion to impose the alcohol-use condition[s] of probation." (*Lindsay*, *supra*, 10 Cal.App.4th at p. 1645.)

ATTORNEY FEES

The probation report recommended that Rhodes be required to pay various fees and fines, the largest of which was a $400 fee for preparation of the presentence report. The court found that Rhodes was unable to pay the presentence report fee.

The court ordered Rhodes to pay $100 toward her attorney fees (§ 987.8), an expense not mentioned in the probation report, and Rhodes contests the attorney fees in this appeal. Defense counsel informed the court that he had spent six hours on the case. The probation report indicated that Rhodes had three children. The court said, "Ms. Rhodes, in light of the fact that you are the custodial parent for your children and the fact you're going to be paying for the A.O.D. program, I'm going to order you to pay the sum of $100.00 toward your attorney fees." Rhodes responded, "I'd rather pay for A.O.D. probation is making me do."

Rhodes contends that the court erred in requiring her to pay attorney fees because there was insufficient evidence of her ability to pay them, and no notice or hearing was afforded on that issue. (§ 987.8, subs. (b), (e) [specifying procedures for imposition of attorney fees].) The probation report stated that Rhodes was 24 years old, and had

worked for Best Western in 2007, Taco Bell in 2009 and 2010, and Wal-Mart in 2012. Rhodes told the probation officer that she was currently working as a technician in a dental lab, but it appears from statements at the sentencing hearing that she may then have been unemployed.

We conclude, under the reasoning of *People v. McCullough* (2013) 56 Cal.4th 589 (*McCullough*), that Rhodes forfeited her objections to the attorney fee award by failing to raise them in the trial court. *McCullough* held that "a defendant who fails to contest [a jail] booking fee when the court imposes it forfeits the right to challenge it on appeal." (*Id.* at p. 591.) *McCullough* noted that a "defendant's ability to pay the booking fee . . . does not present a question of law," and concluded that "because a court's imposition of a booking fee is confined to factual determinations, a defendant who fails to challenge the sufficiency of the evidence at the proceeding when the fee is imposed may not raise the challenge on appeal." (*Id.* at p. 597.) This reasoning applies equally to Rhodes's argument that the court had insufficient evidence of her ability to pay the attorney fees. Since Rhodes cannot argue any such error, she cannot demonstrate any prejudice from the manner in which the fees were imposed.

Rhodes maintains that her statement that she would rather pay for A.O.D. constituted an objection to the attorney fees. We disagree. As the People observe, Rhodes voiced a preference, not an objection. Defense counsel understandably did not object. Rhodes appears capable of gainful employment, the attorney fee award was de minimis, and the court reduced her other recommended fees by more than the amount of the attorney fees imposed.

DISPOSITION

The judgment is affirmed.

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Siggins, J.

We concur:

_____
McGuiness, P.J.

_____
Pollak, J.